



February 6, 2017

EX PARTE VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Joint Petition of Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Association of Healthcare Administrative Management for Expedited Declaratory Ruling and/or Clarification of the 2015 TCPA Omnibus Declaratory Ruling and Order, CG Docket No. 02-278.*

Dear Ms. Dortch:

On February 2, 2017, the undersigned, and Michael McMenamin representing Winning Strategies Washington; Vincent Frakes and Aaron Maguregui, WellCare Health Plans, Inc; Marcus Peterson, Anthem, Inc; Alan Wingfield, Troutman Sanders LLP on behalf of Anthem, Inc. and Blue Cross Blue Shield Association; and Mark Brennan and Arpan Sura, Hogan Lovells LLP representing the American Association of Healthcare Administrative Management, (“Joint Petitioners”) met with several members of the Federal Communications Commission’s (“FCC”) Consumer and Governmental Affairs Bureau: Mark Stone, Deputy Bureau Chief; Kurt Schroeder, Chief, Policy Division; John B. Adams, Deputy Chief, Policy Division; and Kristi Thornton, Associate Division Chief, Policy Division.

At the meeting, we discussed the Joint Petitioners’ petition¹ seeking clarification of the use of telephone numbers in the healthcare context under the Telephone Consumer Protection Act (“TCPA”). Specifically, Petitioners request that the FCC issue a ruling and/or clarify the

¹ Joint Petition of Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Association of Healthcare Administrative Management for Expedited Declaratory Ruling and/or Clarification of the 2015 TCPA Omnibus Declaratory Ruling and Order, CG Docket No. 02-278 (filed July 28, 2015) (“Joint Petition”).



*2015 Omnibus TCPA Order*² as follows:

- 1) That the provision of a phone number to a “covered entity” or “business associate” (as those terms are defined under HIPAA) for the purposes of treatment, payment, or health care operations concerning a consumer as allowed under HIPAA, when the number is supplied in a HIPAA-governed transaction constitutes prior express consent for non-telemarketing calls allowed under HIPAA to that number. (*See Exhibit A for suggested language.*)
- 2) That the prior express consent clarification in paragraph 141 and the non-telemarketing health care message exemption granted in paragraph 147, both in the *2015 Omnibus TCPA Order*, be clarified to include HIPAA “covered entities” and “business associates.” Specifically, each use of the term “healthcare provider” in paragraphs 141 and 147 of the *2015 Omnibus TCPA Order* should be clarified to encompass “HIPAA covered entities and business associates.” (*See Exhibit B for suggested clarifying language.*)

During the meeting, we explained that the first clarification flows from the *2015 Omnibus TCPA Order* and HIPAA. Given the Commission’s expressed reluctance against “unnecessarily restrict[ing] consumer access to information communicated through purely informational calls,”³ along with HIPAA’s existing privacy safeguards, the Bureau should clarify that the provision of a telephone number to a covered entity or business associate demonstrates prior express consent under the TCPA for calls relating to treatment, payment, and health care operations.

With respect to the second request, we explained that there is no legal or policy reason for the Commission to restrict *which* HIPAA covered entity or business associate must receive the telephone number from the consumer when the actual calls made by a HIPAA covered entity or business associate will be identical.

In addition, we again urged the FCC to act expeditiously on the Joint Petitioners’ request, especially given the overwhelming support for the Petition in the docket. It is a critical public policy goal to provide effective and efficient medical care, especially to at-risk populations. The aforementioned clarification by the Bureau would lift that unnecessary and unintended burden from this vital industry.

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd. 7961 (2015) (“*2015 Omnibus TCPA Order*”).

³ *Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd 1830 ¶ 21 (2012).



In accordance with Section 1.1206(b)(2) of the Commission's rules, this letter is being filed electronically with your office. Please contact the undersigned with any questions in connection with this filing.

Respectfully submitted,

Mike Merola
Partner
Winning Strategies Washington

Cc: Mark Stone
Kurt Schroeder
John B. Adams
Kristi Thornton